WP(C) 1555/2007
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

PETITIONER :

Shri Madhab Phukan,
S/o Late C.Phukan, permanent resident of Village Joynagar, P.O. Joynagar, District and P.o. Sivazsagar, Assam and presently serving as Deputy Ranger, Inch arge, Bihubor Beat, Sivasagar Division.

BY ADVOCATES :
Mr GN Sahewalla, Sr. Advocate,
Mr P.Bora,
Md Aslam,
Mr B.Sharma,
Mr D.Senapati,
Ms M.Jain.

RESPONDENTS :

1. The State of Assam,
Represented by the Commissioner and Secretary to the Govt.of Assam, Environment & Forest Department, Dispur, Guwahati-6.

2. The Principal Chief Conservator of Forest, Assam, Rehabari, Guwahati-8.

3. The Conservator of Forests,
Eastern Assam Circle,Jorhat.

4. Divisional Forest Officer,
Sivasagar Division, Office of the
Divisional Forest Officer, Sivasagar
Division, Sivasagar.

5. Shri Atul Bora, Forester-I,
Sivasagar Division Office, Sisavar.

BY ADVOCATES :
Mr G.Soren, GA, Assam,
Mr B.Banerjee.

MISC CASE NO.1324/2007
APPLICANT :

Shri Atul Bora,
Forester-1 , In-charge,
Bihubor Beat Office,
Sibsagar ,P.O. Sibsagar,
Dist. Sibsagar, Assam.

BY ADVOCATES :

Mr B.Banerjee,
Miss M.Deb
Mr J.Laskar.

RESPONDENTS :

State of Assam & Ors.

BY ADOVCATES :

Mr G.Soren,GA, Assam.

Mr GN Sahewalla, Sr. Advocate,
Mr P.Bora,
Md Aslam,
Mr B.Sharma,
Mr D.Senapati,
Ms M.Jain.

Date of hearing : 10.5.2007

Date of Judgment : 21.5.2007

JUDGMENT AND ORDER(ORAL)

The challenge projected is against the order dated 26.3.2007 passed by the Divisional Forest Officer, Sibsagar Division, Sibsagar transferring the petitioner from Bihubor Beat to Division office under Sibsagar Division of the Forest Department of the State. Thereby the respondent No.5 was posted at his place as Incharge of the aforementioned Beat office. By the order dated 30.3.2007 this Court suspended the operation of the order impugned. Being aggrieved, the respondent No.5 has filed an application for vacation of the interim direction and by order dated 4.4.2007 passed in Misc case No.1324/2007 registered thereon, he has been allowed to continue at his new place of posting. The parties having exchanged their pleadings in full ,the writ proceeding as well as the Misc case have been heard together at the admission stage and are being disposed of finally.

2. I have heard Mr GN Sahewalla, Senior Advocate assisted by Mr D. Senapati, Advocate for the petitioner, Mr G.Soren, learned State counsel for the official respondents and Mr B. Banerjee, Advocate for the Respondent No.5.

3. The abridged facts gleaned from the maze of the competing pleadings have to be outlined at the threshold. The petitioner has averred that while he was serving as Forester-I at Sonari Range HQ in the year 2005, he was transferred to Bihubor Beat by office order dated 7.5.2005 issued by the Divisional Forest Officer, Sibsagar Division, Sibsagar (hereinafter also referred to as 'DFO') . After having joined the new place of posting in compliance thereof, the said authority by his order dated 1.7.2005 was pleased to post him as the Incharge of the said Beat. Subsequent thereto, by order dated 20.10.2005 of the Principal Chief Conservator of Forests, Assam, he was promoted to the post of Deputy Ranger and was transferred from Sibsagar Division to Jorhat Division. On a modification of the said order on 25.10.2005 he was however, retained at Sibsagar Division . He accordingly joined as Deputy Ranger under the Sibsagar Division office on 27.10.2005, whereafter, by an order of the same date of the DFO, he was instructed to continue at Bihubor Beat as Incharge thereof. While the matter rested at that, according to the petitioner, the respondent No.5 who is a Forester I on 27.3.2007 informed him of his (respondent No.5's) transfer as Incharge of the Bihubor Beat and also produced a copy of the office order dated 23.3.2007 to the said effect wherefrom it transpired that the petitioner had been posted at the Division office . Apart from contending that the said order had not been officially served on him, the petitioner has asserted that thereby he had been demoted to the lower post of Forester-I. The contravention of transfer guidelines contained in the office memorandum dated 4.2.2002 has also been alleged.

4. The respondent No.4, DFO, Sibsagar Division ,Sibsagar in his aff

idavit pleaded that the posting of the petitioner as Incharge of Bihubor Beat was a temporary arrangement and that by the impugned order he had been transferred to the Division Head quarter in the interest of public service. According to the answering respondent, Sri MN Saikia, Forest Ranger attached to the Division H

Head Quarter is scheduled to retire on superannuation on 30.11.2007 and therefore, one experienced and senior executive staff was required for the Division office to train up the junior batch in the administrative exigency. While affirming that as DFO, he was empowered in law to effect necessary transfers and postings in administering the affairs of the Division and the Ranges thereunder, the said respondent has stated that the beat office is a section under the Division and part office of the Range and a Forester-I was competent to man the same. Transfer of a Deputy Ranger who could supervise the works of the beat office under the instructions of the Range officer to the Divisional office did not signify in any manner , his demotion. It was maintained that the petitioner's ignorance about the impugned order was due to his lack of control over the subordinate staff namely, Sri Horesh Gohain, Fgd who had received the same along with the joining report of the respondent No.5 on 24.3.2007. It was further pointed out that the petitioner had himself forwarded the respondent No.5's joining report to the DFO on 25.3.2007. It was categorically denied that the petitioner by the impugned order had been demoted from the post of Deputy Ranger to that of Forester-I. Reiterating that the transfers have been made in the interest of administration , the answering respondent further asserted that the guidelines pertaining thereto as contained in the office memorandum dated 4.2.2002 were applicable to gazetted officers and that the post of Deputy Ranger being a non gazetted in Grade III in service was beyond the purview thereof. In his rejoinder to the said affidavit , the respondent No.4 further pleaded that after the petitioner had joined the Sibsagar Division on 27.10.2005 on his promotion as Deputy Ranger, he was allowed to continue as Incharge of Bihubor Beat office due to shortage of experienced and sincere Forester I. By that time, Sri MN Saikia, Deputy Ranger had been promoted to the post of Forest Ranger on 22.6.2005 in the Sibsagar Division. As per the cadre strength of the Sibsagar Division there are three posts of Deputy Ranger ,one of which is being held by Sri Biman Bailing , Incharge, Protection Squard and other by Sri Bijoy Saikia at Sonari Range. As Sri MN Saikia was to retire on 30.11.2007, the petitioner being a senior and experienced official of the department had been transferred to the Divisional Headquarter in the interest of public service. It was reiterated that the petitioner had not been demoted in rank thereby.

5. In his reply affidavit , the petitioner while refuting the justification of administrative exigency or public interest, insisted that there being one post of Deputy Ranger held by Sri Biman Bailung in the Division office who was senior to him in service, the plea of his (petitioner) necessity to train up the junior officers was obviously purported and imaginary. He maintained that it was evident from the transfer order that he had been posted to a lower rank. He contended that Bihubor Beat was an independent accounts beat and was under the direct control of the Division unlike other beats under the range office. As the Bihubor beat was thus to be manned by Senior most Forester-I or a Deputy Ranger, he was posted there as Incharge thereof, in view of dearth of a post of Deputy Ranger in the divisional office. He reiterated that there was no vacant post of Deputy Ranger in the Division Headquarter and the lone post there was occupied by Sri Biman Bailung, Deputy Ranger. He also challenged the posting of the respondent No.5 as Incharge, Bihubor beat office being in contravention of the circular dated 9.7.2003 of the Principal Chief Conservator of Forests, Assam asserting that he (respondent No.5) being a non trained officer could not have been entrusted that responsibility. The petitioner imputed lack of bonafide and extraneous consideration in respondent No.5's transfer as incharge , Bihubor beat office on the date next to his joining the Sibsagar Division on 22.3.2007.

6. These had been controverted by the respondent No.4 in his rejoinder contending that under Rule 5(2)(xi) of the Assam Forest Manual Vol II, he wa

s authorized to transfer any officer of the subordinate establishment within t he Division and that the placement of the respondent No.5 being in accord with the spirit of the guidelines contained in the circular dated 9.7.2003 to ensu re proper utilization of the human resources of the department, the same was un assailable . The charge of malafide and/or extraneous consideration was emphati cally denied.

7. The respondent No.5 in his application for vacation of the inte rim order, while emphasizing that the petitioner's transfer did not signify hi s demotion to the post of Forester pointed out that the said plea was self defea ting as the petitioner on his promotion as Deputy Ranger had on being asked j oined at Bihubor beat office in absence of such a post. According to the said re spondent, the transfer guidelines being not legally enforceable, any contention based thereon against the impugned order was untenable. The said respondent as serted that on the promotion of Sri MN Saikia, Deputy Ranger to the rank of Fore st Ranger on 22.6.2005, the petitioner had been elevated thereto and posted at Sibsagar Division office and the two other posts of Deputy Ranger are held by Sri Baimal Bilung and Sri Bijoy Saikia and that therefore, his apprehension o f demotion is misconceived. The respondent No.5 claimed that he having held the post of Forester-I from 1988 was sufficiently experienced and trained and there fore, his posting as Incharge, Bihubor beat office could by no means be impeache d as repugnant to the circular dated 9.7.2003. As the petitioner has no vested right to continue to hold the office of Incharge, Bihubor beat office, his trans fer therefrom thus does not merit any interference in law. The decision of th is Court in WP(C) No.2002/2006, Sri Naba Krishna Mahanta, Petitioner v. State o f Assam & Ors, Respondents was relied upon to offset the challenge oriented on the circular dated 9..7.2003. The petitioner in reply reiterated the averments in the writ petition as well as the reply affidavit to the counter of the resp ondent No.4. An affidavit to the application filed for vacation was also filed b y him in the same lines.

8. Mr Sahewalla has persuasively urged that there being admittedly no vacancy of Deputy Ranger in the Division office , the petitioner's transfer was to a lower post and being impermissible in law, the impugned order is liable to be adjudged illegal ,null and void. The respondent No.5 having been transfer red to the Sibsagar Division only on 19.3.2007, his posting as Incharge, Bihubo r beat office by displacing the petitioner to a non existent post in hot haste smacks of impertinent considerations and collateral purposes rendering the i mpugned transfer indefensible and non est in law. According to the learned Seni or counsel, the Bihubor beat being an accounts beat under direct control of the Division office, a Deputy Ranger in absence of such a post could be placed in a dministrative control thereof. The petitioner's transfer therefrom to the Divisi on office was adifferent proposition altogether and in absence of a vacant pos t of Deputy Ranger there, his posting by the impugned order was manifestly to t he post of Forester-I. The learned Senior counsel reiterated the assailment of the respondent No.5's posting as Incharge, Bihubor beat office being in transgre ssion of the circular dated 9.7.2003.He also to that effect drew the attentio n of this Court to a Table being the quarterly disposal list of staff of the S ibsagar Division to underline that the respondent No.5 was an untrained office r in the subordinate establishment.

9. Mr Soren, argued that it being more than obvious from the pleade d stand of the respondents that the petitioner had not been transferred to a low er post, the contention to the contrary, is wholly hypothetical and misplaced. T he petitioner having been transferred in the organizational exigency and the o rder not being vitiated by malafide or breach of any statutory provision, no int erference of this Court is called for. The learned State counsel asserted that the respondent No.5's posting as Incharge, Bihubor beat office was consistent with the underlying objective of the circular dated 9.7.2003. The DFO havin g made the impugned arrangement on a balanced consideration of all relevant fact ors to subserve the administrative needs, this court in exercise of its power o f judicial review would not dislodge the same.

10. Mr Banerjee while endorsing the above has contended that the pe

titioner having joined the Sibsagar Division office initially on his promotion as Deputy Ranger under similar circumstances, it is thus fallacious on his part to denounce the impugned order on that count. Further, he having continued as Deputy Ranger at the Bihubor beat office in absence of such a post without any reservation, his ground of challenge founded on demotion is evidently frivolous. While contending that the petitioner's promotion as Deputy Ranger had been against a post left vacant on the elevation of Sri MN Saikia to that of Forest Ranger on 22.6.2005, Mr Banerjee contended that the impugnment of his transfer being wholly unsustainable in law, the petition is liable to be dismissed. Moreover, the transfer guidelines are not legally enforceable and the respondent No.5 to the knowledge of the petitioner had joined as Incharge, Bihubor beat office on 24.3.2007. There being no factual foundation whatsoever of the accusation of malafide or inapposite consideration, no interference is warranted in exercise of this Court's extra ordinary jurisdiction.

11. I have bestowed my anxious consideration to the competing arguments. A bare perusal of the order impugned does not demonstrate that the petitioner thereby had been posted to the rank of Forester-I as perceived by him. Thereby the respondent No.5 who is a Forester-I has been transferred from the Division office as Incharge, Bihubor beat office and in turn, the petitioner has been shifted to the Division office. The antecedent facts disclose that the petitioner had been posted as Incharge, Bihubor beat office initially as Forester-I and on his promotion as Deputy Ranger was retained in the Sibsagar Division and allowed to continue at the said beat office . Thus, the arrangement by which the petitioner was placed at the Bihubor beat office before his promotion as Deputy Ranger for all practical purposes continued even thereafter. Noticeably, there is no denial of the fact that one post of Deputy Ranger in the Sibsagar Division is available to accommodate the petitioner for his service benefits attachable to the post. The pleadings unerringly disclose that out of three posts of Deputy Ranger ,one is held by Sri Baiman Bilung at the Divisional Headquarter and the other by Bijoy Saikia at the Sonari Range. The petitioner also has been categorically persisting that no post of Deputy Ranger in the Division office was available. Significantly, the respondent No.4, the author of the impugned order has clarified that the impugned order has been passed in the interest of public service and does not effect the petitioner's demotion to any rank lower than that of Deputy Ranger. The authority of the respondent No.4 to occasion the transfer is not under challenge. Indeed, under the Assam Forest Manual Vol-II, he wields the power to transfer any officer of the subordinate establishment.

The official records E/14/TP of the Establishment Branch of the office of the DFO, Sibsagar Division ,Sibsagar disclose that the petitioner on his promotion was allowed to continue as Incharge, Bihubor beat office in absence of any other experienced and efficient Forester-I thereat. It further discloses that the respondent No.5 having joined the Sibsagar Division on being transferred from Golaghat division, the matter was placed before the DFO for fixing his place of posting as Forester-I. Considering his experience in the said post, the said respondent was posted as Incharge, Bihubor beat office and the petitioner was transferred to the Division office as he had been promoted as Deputy Ranger in place of Sri MN Saikia who was elevated as Forest Ranger. The fact that Sri MN Saikia was to retire on superannuation on 30.11.2007 was also recorded in support of the decision. In view of the above revelations from the official records and the unambiguous and categorical stand of the DFO in his counter that the impugned order of transfer does not construe the petitioner's demotion from the rank of Deputy Ranger , I am of the unhesitant opinion that the challenge mounted on this ground is untenable. The DFO being incharge of conducting the affairs of the subordinate establishments is the best judge of the organizational exigencies and must be accorded a leeway for designing his set up and maximum utilization of resources at his disposal. The records do not reveal any inappropriate factor inducing the impugned order. The fact that Bihubor beat office being an accounts beat is under the direct control of the DFO and that therefore the Deputy Ranger can be deputed to be the incharge thereof is of no consequence i

n favour of the petitioner in the face of the above. The fact that immediately o n his promotion, the petitioner as Deputy Ranger had joined the Division offi ce with the existing identical hierarchy without any remonstrance also weighs against him in this regard.

12. The guidelines contained in the communication dated 9.7.2003 to cause the transfer and posting of any gazetted forest official referred to t herein are explicitly executive instructions. While the same have been comprehe nded in the interest of smooth functioning of the Human Resources department , no tangible parameter has been outlined therein to identify a trained from an untrained Forester thus leaving it to the authorities concerned to ad judge the suitability of a Forester to be posted as Incharge of a revenue stat ion or beat on the basis of his service experience. This Court in Naba Krishna M ahanta(Supra) had negated the challenge to the placement of untrained Forester- I as Incharge of a revenue station/forest beat founded on the very guidelines b y taking note of amongst others of their long service tenure in that post(Fores ter-I). Indisputably, the respondent No.5 who had been inducted as Forester-I in the year 1988 had, in the meantime, put in 19 years of service in that post. In the above factual premise, in absence of any material on record rendering him otherwise non-suitable ,his posting as Incharge, Bihubor beat office cannot be repudiated as illegal, arbitrary and violative of the guidelines contained in the letter dated 9.7.2003. The administrative instructions therein have to be construed on a pragmatic and realistic touchtone the dominant purpose thereof being to satiate the administrative needs ensuring maximum harnessing of th e available man power and resources. The petitioner's plea in this regard as wel l falls.

13. The respondent No.4's stand that the transfer guidelines conta ined in office memorandum dated 2.4.2002 are inapplicable to the Deputy Range r being a non gazetted grade III post has not been categorically controverted . The petitioner had responded thereto insisting that the impugned order is oth erwise illegal having mandated his demotion thereby. No argument in particul ar however , has been advanced on behalf of the petitioner based on the guide lines. The pleadings of the petitioner do not lay any factual foundation to reinforce the assertion of malafide or any non germane consideration motivat ing the impugned transfer. The respondent No.5's posting as Incharge , Bihubor beat office immediately after his joining the Sibsagar Division ipso facto is not suggestive of any bias or malafide or an overzealous endeavour on the part of the authorities to favour him therewith.

14. The circumscription on the scope of interference with an ord er of transfer in exercise of the power of judicial review is no longer res int egra. Except in cases of established malafide or infraction of statutory provi sion , judicial intervention is undesirable nay unwarranted. This is, princip ally, as administrative authorities are best equipped to estimate the depart mental exigencies and accordingly position their staff in the interest of pub lic service and a writ court is not expected to exercise an appellate jurisdi ction over such determination and dominion unless the decision impugned is i n flagrant contravention of law or prompted by factors annihilative of official as well as public interest.

15. The Apex Court in the State of U.P. & Ors, Appellants v. Siya Ra m and another, Respondents (2004) 7 SCC 405 has aptly delineated the compass of judicial scrutiny of transfer in public service in the following -

> The High Court while exercising jurisdiction under Article 226 and 2 27 of the Constitution of India had gone into the question as to whether the t ransfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee or a public underta king has any legal right to be posted forever at any one particular place or pl ace of his choice since transfer of a particular employee appointed to the class or category of transferable posts form one place to other is not only an incide nt, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outc

ome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine , as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

16. On a consideration of the totality of the materials available on records, I am of the view that the impugned order does not merit interference of this Court, the same being not afflicted by any one or more of the recognized vitiating infirmities alluded hereinabove.

17. The petition being devoid of merit is thus dismissed. Interim order stands vacated. Misc case is accordingly disposed of. No costs.